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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 KEITH CAVANAUGH,

8 Plaintiff(s),

9 v.

10 SAFECO INSURANCE COMPANY OF
11 ILLINOIS,

12 Defendant(s).

Case No. 2:18-CV-379 JCM (NJK)

ORDER

13
14 Presently before the court is the matter of *Cavanaugh v. Safeco Insurance Company of*
15 *Illinois*, case number 2:18-cv-00379-JCM-NJK.

16 **I. Facts**

17 This action arises from Cavanaugh's automobile insurance claim against his insurer,
18 Safeco. (ECF No. 11). Cavanaugh alleges that on December 20, 2016, an uninsured motorist
19 struck him with an Infiniti Q45. *Id.* The first amended complaint asserts that Cavanaugh incurred
20 bodily injuries, loss of earning capacity, physical impairment, and pain and suffering, but does not
21 provide details about the nature of these injuries. *Id.*

22 Cavanaugh further alleges that at the time of the collision he had an automobile insurance
23 policy with Safeco, which provided uninsured/underinsured motorist insurance coverage. *Id.*
24 Cavanaugh claims to have demanded from Safeco the \$100,000.00 policy limit in order to cover
25 the damages that he incurred as a result of the collision. *Id.* After receiving Cavanaugh's medical
26 records, which showed that his medical bills totaled \$12,933.20, Safeco allegedly responded with
27 a settlement offer in the amount of \$13,045.00. *Id.*

1 On January 17, 2018, Cavanaugh initiated this action in state court. (ECF No. 1-1). On
2 March 1, 2018, Safeco removed this action to federal court. (ECF No. 1).

3 On March 28, 2018, Cavanaugh filed a first amended complaint, which asserts four causes
4 of action: (1) breach of contract; (2) contractual breach of the implied covenant of good faith and
5 fair dealing; (3) tortious breach of the implied covenant of good faith and fair dealing; and (4)
6 violation of the Nevada Unfair Claims Practices Act, NRS 686A.310. (ECF No. 11).

7 **II. Legal Standard**

8 Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*,
9 437 U.S. 365, 374 (1978). “A federal court is presumed to lack jurisdiction in a particular case
10 unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of Colville*
11 *Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989).

12 Federal Rule of Civil Procedure 12(b)(1) allows defendants to seek dismissal of a claim or
13 action for a lack of subject matter jurisdiction. Dismissal under Rule 12(b)(1) is appropriate if the
14 complaint, considered in its entirety, fails to allege facts on its face sufficient to establish subject
15 matter jurisdiction. *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d
16 981, 984–85 (9th Cir. 2008).

17 Although the defendant is the moving party in a 12(b)(1) motion to dismiss, the plaintiff is
18 the party invoking the court’s jurisdiction. As a result, the plaintiff bears the burden of proving
19 that the case is properly in federal court to survive the motion. *McCauley v. Ford Motor Co.*, 264
20 F.3d 952, 957 (9th Cir. 2001) (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178,
21 189 (1936)). More specifically, the plaintiff’s pleadings must show “the existence of whatever is
22 essential to federal jurisdiction, and, if [plaintiff] does not do so, the court, on having the defect
23 called to its attention or on discovering the same, must dismiss the case, unless the defect be
24 corrected by amendment.” *Smith v. McCullough*, 270 U.S. 456, 459 (1926).

25 **III. Discussion**

26 28 U.S.C. § 1332 allows federal courts to exercise diversity jurisdiction in civil actions
27 between citizens of different states where the amount in controversy exceeds \$75,000.00. *See* 28
28 U.S.C. § 1332(a). “In determining the amount in controversy, courts first look to the complaint.

1 Generally, ‘the sum claimed by the plaintiff controls if the claim is apparently made in good faith.’”
2 *Ibarra v. Manheim Invests., Inc.* 775 F.3d 1193, 1197 (9th Cir. 2015) (citing *St. Paul Mercury*
3 *Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). At the time of removal, parties may submit
4 supplemental evidence to show that the amount in controversy in in excess of \$75,000.00. *Id.*
5 (citing *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997).

6 According to the first amended complaint, Cavanaugh has incurred total damages in excess
7 of \$15,000.00, which includes \$12,933.20 in medical bills. (ECF No. 11). Moreover, Safeco’s
8 petition for removal does not include any additional evidence regarding the extent Cavanaugh’s
9 alleged damages. *See* (ECF No. 1). As the figures in the first amended complaint are well below
10 the amount in controversy threshold under § 1332, the court will remand this case to state court
11 for lack of subject matter jurisdiction.

12 **IV. Conclusion**

13 Accordingly,

14 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Safeco’s motion to
15 dismiss (ECF No. 5) be, and the same hereby is, DENIED without prejudice.

16 IT IS FURTHER ORDERED that Safeco’s motion to dismiss the first amended complaint
17 (ECF No. 13) be, and the same hereby is, DENIED without prejudice.

18 IT IS FURTHER ORDERED that Safeco’s motion for summary judgment (ECF No. 22)
19 be, and the same hereby is, DENIED without prejudice.

20 IT IS FURTHER ORDERED that the matter of *Cavanaugh v. Safeco Insurance Company*
21 *of Illinois*, case number 2:18-cv-00379-JCM-NJK, be, and the same hereby is, REMANDED.

22 The clerk shall close the case accordingly.

23 DATED December 19, 2018.

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UNITED STATES DISTRICT JUDGE